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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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| In the Matter of: | ) | |
| | ) | |
| Pacific Gas and Electric Co. | ) | Docket No. 72-26-ISFSI |
| | ) | |
| (Diablo Canyon Power Plant, | ) | |
| Units 1 and 2) | ) | |

ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY TO THE PETITIONS FOR LEAVE TO INTERVENE AND REQUESTS FOR HEARING OF LORRAINE KITMAN AND THE SAN LUIS OBISPO MOTHERS FOR PEACE ET AL.

## I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Pacific Gas and Electric Company ("PG&E"), applicant in the above-captioned matter, hereby files its answer to the Petitions for Leave to Intervene and Requests for Hearing filed by Lorraine Kitman on May 10, 2002, and by San Luis Obispo Mothers for Peace, et al. ("SLOMFP" or "Petitioners") on May 22, 2002. As discussed below, Ms. Kitman has not satisfied the Commission's requirements for standing to intervene in this matter. Therefore, her Petition should be denied. With respect to the SLOMFP, et al. Petition, Petitioners Central Coast Peace and Environmental Council, Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, San Luis Obispo Chapter of Grandmothers for Peace International, the Ventura County Chapter of the Surfrider Foundation, the Cambria Legal Defense Fund, and Santa Margarita Area Residents Together have not demonstrated standing to intervene, and should be dismissed from the proceeding. PG&E does not challenge the standing of petitioners San Luis Obispo Mothers for Peace, the Santa Lucia



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Chapter of the Sierra Club, and San Luis Obispo Cancer Action Now. However, before any of these petitioners may be admitted as parties to this proceeding, they must proffer at least one admissible contention.

## II. BACKGROUND

### A. The Approval at Issue

On December 21, 2001, PG&E submitted an application for a site-specific license under 10 C.F.R. Part 72 to possess spent fuel, and other radioactive materials associated with spent fuel, generated at the Diablo Canyon Power Plant ("DCPP") in an independent spent fuel storage installation ("ISFSI"). If granted, the license will authorize PG&E to store spent fuel and associated materials in a dry cask storage system at the DCPP site in San Luis Obispo County. A notice of opportunity for hearing was published in the *Federal Register* on April 22, 2002.[1] In response to this notice, Petitioner Kitman submitted a petition to the NRC Staff on May 10, 2002.[2] SLOMFP filed a petition, on behalf of its members as well as a number of other organizations, with the Commission on May 22, 2002.

### B. The NRC's Standing Requirements

To intervene as of right in a Commission licensing proceeding, a petitioner must demonstrate standing. The Commission's regulations at 10 C.F.R. § 2.714(a)(2) provide that a

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1 *See* Pacific Gas and Electric Co.; Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the Diablo Canyon Independent Spent Fuel Storage Installation, 67 Fed. Reg. 19,600 (Apr. 22, 2002) ("Notice").

2 Ms. Kitman submitted her petition to the NRC Office of the General Counsel via e-mail dated May 10, 2002. It does not appear that her petition was properly filed in accordance with the requirements for service set forth in the Notice and NRC regulations at 10 C.F.R. § 2.712. Consequently, counsel for PG&E did not receive notice of the petition until May 23, 2002, through a communication with NRC Staff. For purposes of filing the answer thereto, PG&E is treating the petition as being filed on May 23.

petition to intervene, among other things, "shall set forth with particularity the interest of the petitioner in the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714 (d)(1)]." Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene the Atomic Safety and Licensing Board ("Board") is to consider:

> (i) The nature of the petitioner's right to be made a party to the proceeding;
>
> (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding;
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

The Commission has further determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) the injury can fairly be traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See, e.g., Private Fuel Storage, L.L.C.* (ISFSI), CLI-99-10, 49 NRC 318, 323 (1999).

To establish standing, an organization must allege with particularity : (1) that the action will cause an "injury in fact" to either (a) the organization's interests or (b) the interests of its members; and (2) that the injury is within the "zone of interests" protected by the Atomic Energy Act of 1954, as amended, and/or the National Environmental Policy Act. *See Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646 (1979). To invoke standing based on representing its members' interests, the organization must (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show (preferably by affidavit) that the organization is

authorized to request a hearing on behalf of that member. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354; *aff'd*, CLI-98-21, 48 NRC 185 (1998); *citing Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). To derive standing from a member, the organization must demonstrate that the individual member has standing to participate. *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1979).

An individual petitioner, or a member of an organization, may base its standing upon a showing that his or her residence, or that of its members, is within the geographical area that might be affected by an accidental release of fission products. Under the "rule of thumb" generally applied in proceedings related to licensing the reactor facility, petitioners residing within 50 miles of a reactor are presumed to have standing. *See Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 75 n.22. However, the NRC also has held that there is no 50-mile proximity presumption for standing in materials licensing proceedings or reactor licensing proceedings involving approvals with less potential for offsite radiological consequences. This has been particularly the case with respect to approvals for spent fuel storage. *See, e.g., Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99; *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985) (greater proximity is required in a spent fuel pool rerack proceeding than in a power reactor proceeding; a distance of 43 miles, paired with generalized claims of injury from radiation held insufficient to establish standing). Rather than relying on a 50-mile proximity, petitioners in spent fuel storage pool expansion proceedings must demonstrate "close proximity." *Virginia Elec. & Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-522, 9 NRC 54, 56 (1979) ("zone of harm" is smaller for spent fuel pool expansion proceeding than a reactor operating license proceeding).

Indeed, it would make no sense for purposes of assessing standing to equate an approval related to dry cask storage with an approval related to the power reactor. The former involves a completely passive and unpressurized system, whereas the power plant involves a complex combination of active and passive structures, systems, and components.

A petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2).

## III. DISCUSSION

### A. Kitman Petition

For the reasons discussed below, Ms. Kitman's petition does not demonstrate that she has standing to intervene in this proceeding. The petition should be denied.

#### *1. Ms. Kitman's Standing*

Ms. Kitman's petition states that she is a resident of Arroyo Grande, California and works in the town of Oceano, California. The petition indicates that DCPP is "fifteen miles or so north — upwind — of the area we live." (Kitman Pet. at 1.) The petition then discusses two generalized concerns setting forth Ms. Kitman's interest in this proceeding. Specifically, the petition states that Ms. Kitman is "worried" about a terrorist attack on DCPP. (*Id.* at 1.) In addition, Ms. Kitman is "worried" by the evacuation plans for the nearby Lopez Dam. The petition alleges that, in a "major earthquake," DCPP would "very likely experience a mishap" causing release of radiation from either the plant or the proposed fuel storage casks. The Lopez Dam "would very likely fail," requiring evacuation to the north, "against the prevailing winds carrying radiation toward us." (*Id.* at 1.) These "worries" do not demonstrate an injury which is "concrete and particularized." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). Rather,

the stated "worries" involve conjectural, speculative scenarios that cannot be traced to the challenged action — licensing of an ISFSI on the DCPP site — or redressed by a favorable ruling in this proceeding.

Ms. Kitman's nonspecific "worry" about terrorist attacks does not in any way demonstrate how either the probability or consequences of such an event are increased by the proposed action, given that the power plant and spent fuel pool will be located at the site regardless of Commission action on the proposed ISFSI. This particular conjecture also constitutes, at best, a challenge to the design basis security threat of the DCPP facility as well as the proposed ISFSI. Such a challenge is impermissible in an individual licensing proceeding such as this, as it takes issue not with the proposed licensing action, but rather with the substantive content of Commission regulations. *See* 10 C.F.R. § 2.758(a); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 151 (2001); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999).[3]

Ms. Kitman's concerns regarding the Lopez Dam are also clearly beyond the scope of this proceeding. Moreover, while Ms. Kitman is also concerned about releases of radiation from the power plant itself, theoretically resulting from an earthquake, the petition does

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[3] Ms. Kitman's security-related concerns also involve generic issues currently under Commission review. The Commission's ongoing generic review of security concerns is the appropriate vehicle for considering such concerns. Well-established Commission precedent holds that proposed contentions concerning generic issues that are (or are about to become) the subject of rulemaking by the NRC should not be adjudicated in individual licensing proceedings. *See, e.g.*, *Oconee*, CLI-99-11, 49 NRC at 345; *Private Fuel Storage, L.L.C.* (ISFSI), LBP-98-7, 47 NRC 142, 179 (1998). Thus, because Ms. Kitman's asserted "worries" regarding terrorist attacks (1) are not related to the approval at issue, and (2) cannot be redressed by a favorable decision in this proceeding, they provide no basis for standing.

not establish any nexus between earthquakes, radiological releases from DCPP itself, and storage of spent fuel at an ISFSI on the DCPP site. *See Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 122 (1992). To the extent that Ms. Kitman is implying that the NRC should impose different or more stringent requirements upon DCPP with respect to seismic issues, her request is more appropriately treated as one for agency action pursuant to 10 C.F.R. §§ 2.802 or 2.206.

In sum, apart from the vague and generalized nature of the claims of potential injuries, Ms. Kitman has failed to show how these "worries" are injuries traceable to the approval at issue, or how they could be redressed in this proceeding. Even a petitioner which bases its standing on the proximity of his or her residence to a nuclear facility must describe not only the nature of its property or residence and its proximity to the facility, but also how their health and safety may be jeopardized by the proposed action itself. *N. States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 315 (1989). Because Ms. Kitman has not articulated a concrete, particularized injury with a causal nexus to the proposed licensing action, the Commission should not find standing.

2. *Ms. Kitman's Stated Aspects*

10 C.F.R. § 2.714(a) (2) requires that a petitioner set forth the "specific aspect or aspects of the subject matter of the proceeding" as to which it wishes to intervene. The requirement is satisfied by identifying "general potential effects of the licensing action or areas of concern" within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990). For the reasons discussed above, Ms. Kitman has not identified specific aspects of interest that are within the scope of this proceeding. Terrorism issues are generic matters beyond the scope of individual

licensing cases. Moreover, while generalized concerns related to radiological health and safety or the protection of the environment may be relevant to an NRC review, these concerns are not linked in the petition to the proposed ISFSI.

B. SLOMFP, et al. Petition

*1. Standing of Petitioners*

SLOMFP, as well as nine other organizations, claim standing based on their representation of their members. The nine other organizations are as follows: Central Coast Peace and Environmental Council; Environmental Center of San Luis Obispo; Nuclear Age Peace Foundation; San Luis Obispo Chapter of Grandmothers for Peace International; San Luis Obispo Cancer Action Now; Santa Lucia Chapter of the Sierra Club; Ventura County Chapter of the Surfrider Foundation; the Cambria Legal Defense Fund; and Santa Margarita Area Residents Together. All of these organizational petitioners base their standing on either (1) the geographic proximity of their members' residences or activities to DCPP, or (2) the geographic proximity of their members' residences to potential transportation routes for spent nuclear fuel, or (3) a combination of the first two.

To support the standing of individuals in this proceeding based on proximity, the petition states that "environmental impacts of cask-handling accidents can occur at a distance of 50 miles." (SLOMFP Pet. at 3.) SLOMFP relies on Table H-7, "Radiological Consequences of Repository Operations Accidents for Median (50th-Percentile) Meteorological Conditions," of DOE/EIS-0250D, "Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada" (July 1999). Table H-7 assumes that the exposed population would consist of individuals living within about 50 miles of the repository. This analysis, prepared by DOE and

related to a potential high level waste repository at Yucca Mountain, is not directly applicable to dry cask storage operations at a single nuclear power plant ISFSI. The reference is insufficient to establish what would, in effect, be a de facto 50-mile proximity presumption for a finding of injury in fact in an ISFSI licensing case.[4] The NRC has never applied such a presumption to proceedings of this kind and such a presumption would be illogical. As discussed above, for purposes of assessing standing, the potential for offsite consequences from a passive dry cask cannot be equated to the potential related to reactor operations. Moreover, the Petitioners have not alleged any specific and credible beyond-design-basis events at an ISFSI that should be deemed to confer standing at this distance.

To support standing, the petition also cites to *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 69-70, *rev'd on other grounds*, CLI-96-7, 43 NRC 235 (1996). (SLOMFP Pet. at 3.) In that case, concerning the decommissioning plan for Yankee Rowe, the Board found standing for petitioners residing within 10 miles of the plant and who used the area near the reactor, where minor public exposures could be anticipated from the decommissioning process. The facts of that case are sufficiently disparate from those of the instant proceeding as to make this case unhelpful as precedent. The Commission's case law governing standing with respect to spent fuel pool proceedings has far greater bearing on the facts of this proceeding. As discussed above, rather than the 50-mile proximity used for reactor licensing proceedings, petitioners in spent fuel storage pool expansion proceedings must demonstrate "close proximity." In *North Anna*, the Atomic Safety and Licensing Appeal Board found that petitioners "living little more than a stone's throw from the facility" met the close

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[4] Even assuming that the analyzed accident scenarios in Table H-7 are relevant to dry cask operations at a plant site, the projected doses to *maximally exposed* offsite individuals in the table are extremely small.

proximity test. *North Anna*, ALAB-522, 9 NRC at 56. The Commission has held that residence within 17 miles from a facility has been sufficient to establish standing in a case involving the proposed expansion in capacity of a spent fuel pool. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-31 (1999). Thus, petitioners residing up to 17 miles away from a facility will meet the Commission's proximity requirements in such proceedings.[5] *See also Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit No.3), LBP-00-02, 51 NRC 25, 27-28 (2000).[6] This is a very different standard than the 50-mile (or beyond) standard presumed in the SLOMFP petition.

Some of the organizations also rely upon alleged exposures related to the potential (and it is purely conjecture at this time) for transportation of spent fuel near their residences. The petition cites a Board's finding that "incident-free shipping of plutonium provides a dose of ionizing radiation, albeit small, to anyone next to the transport vehicle and a minor exposure to radiation, even one within regulatory limits, is sufficient to state an injury in fact." *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 417 (2001). However, this case has no relevance to the instant proceeding. The proposed Part 72 license application for the DCPP ISFSI does not request any

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5 In several other proceedings involving spent fuel storage pool issues, the NRC addressed the standing of petitioners who lived or worked within several miles of the facility. *See, e.g., Gen. Pub. Utils. Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 157-59 (1996) (petitioner working within one mile of the facility and another petitioner living within one-half mile of the facility established standing); *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 NRC 452, 455 (1988) (parties conceded standing of petitioner residing within 10 miles of the facility).

6 The limited case law on standing in ISFSI proceedings is consistent with the more extensive precedent for wet storage proceedings. *See, e.g., Private Fuel Storage* (ISFSI), LBP-98-7, 47 NRC 142, 169 (finding standing for petitioners residing (1) less than 2000 feet from the boundary of the proposed facility; (2) within 4 miles of the north boundary of the Skull Valley Band reservation, upon which the facility was to be constructed; and (3) between 4000 feet and 2.5 miles from the proposed facility).

approval related to transportation of spent fuel to Yucca Mountain or any other destination. Transportation approvals are addressed in other federal processes, and must be addressed for spent fuel at DCPP at the appropriate time — regardless of whether the ISFSI is licensed or whether the fuel remains in wet storage in the current spent fuel pools. Moreover, close proximity to a transportation route — even where the petitioner resides one mile from the identified route — alone would in any event not be sufficient to establish standing. *Int'l Uranium (USA) Corp.* (Source Material License Amendment), LBP-01-08, 53 NRC 204, 219 (2001); *N. States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990).

To the extent that Petitioners would base their standing on the environmental impacts of transportation of fuel and radioactive waste to and from the reactor, petitioners are, in effect, also raising issues related to operation of the power plant that generates the spent fuel and, in so doing, challenging Table S-4, "Environmental Impact of Transportation of Fuel and Waste to and From One Light-Water-Cooled Nuclear Power Reactor." *See* 10 C.F.R. § 51.52. It is well established that contentions challenging the validity of NRC regulations are inadmissible under 10 C.F.R. § 2.758. *Kansas Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), ALAB-837, 23 NRC 525, 544 (1986); *see Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 544 (1986) (rejecting a challenge to Table S-4).

Based upon the above, the standing of each petitioner organization (all basing standing on geographical proximity to the proposed facility or to hypothetical transportation routes) is analyzed further below.

a. <u>San Luis Obispo Mothers for Peace</u>

In support of standing for SLOMFP, the petition includes the affidavits of SLOMFP members Susan Biesek, Elaine Holder, Nancy Walker, and Jill ZamEk. All four

representatives base their standing on their proximity to DCPP — Ms. Biesek and Ms. Walker live within 10 miles of the plant; Ms. ZamEk and Ms. Holder live within 20 miles of the plant. (SLOMFP Pet., Ex. 1-4.)

In view of the proximity of the respective residences of Ms. Biesek and Ms. Walker to DCPP, and following Commission precedent, PG&E does not oppose SLOMFP's claim of representational standing in this proceeding.[7]

b. Santa Lucia Chapter of the Sierra Club

This petitioner bases its standing upon the geographic proximity of its member, Peter Wagner, to DCPP. In his affidavit, Mr. Wagner states that he resides in Morro Bay, California, within 15 miles of the plant. (SLOMFP Pet., Ex. 6.) Licensing boards have held that residence within 17 miles from a facility has been sufficient to establish standing in a case involving the proposed expansion in capacity of a spent fuel pool. *See Shearon Harris*, LBP-99-25, 50 NRC at 29-31; *Millstone*, LBP-00-02, 51 NRC at 27-28. Consequently, PG&E does not challenge the Santa Lucia Chapter of the Sierra Club's standing to intervene in this proceeding.

c. San Luis Obispo Cancer Action Now

Petitioner San Luis Obispo Cancer Action Now bases its standing upon the geographical proximity of its member, Virginia Monteen, to DCPP and to U.S. Highway 101. (SLOMFP Pet., Ex. 7.) Ms. Monteen states that she lives and works in the town of San Luis Obispo, which is 10 miles from DCPP. Although the exact location and distance from DCPP of either her residence or workplace is unclear from the face of her affidavit, assuming that Ms.

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7 PG&E does not concede that a residence 20 miles from the plant is "little more than a stone's throw" for the purposes of determining standing by proximity.

Monteen in fact resides and/or works within 17 miles of the facility, PG&E does not contest her standing in this proceeding.[8]

d. Environmental Center of San Luis Obispo

This petitioner bases its standing on a member's geographical proximity to the plant. The affidavit of Pamela Heatherington states that she resides in Atascadero, California, within 30 miles of DCPP. (SLOMFP Pet., Ex. 3.) Thirty miles does not meet the "close proximity" test in this proceeding. *See Pilgrim*, LBP-85-24, 22 NRC at 98-99. Rather, the petitioner needs to make a particularized showing that the risk of injury from the proposed ISFSI extends that far from the facility. Such a showing is absent here, and the petitioner should be dismissed.

e. Cambria Legal Defense Fund

The Cambria Legal Defense Fund bases its standing on the residence of its founder and director, Suzy Ficker. Ms. Ficker lives in Cambria, California, and states that her home is located 27 miles from DCPP. (SLOMFP Pet., Ex. 9.) As in the case of a thirty-mile proximity, discussed above, a residence twenty-seven miles from the plant is sufficiently distant so as to require a particularized showing that the risk of injury from the proposed ISFSI extends that far from the facility. Absent that showing, the Cambria Legal Defense Fund cannot demonstrate standing based on Ms. Ficker's geographic proximity to the plant, and should be dismissed from the proceeding.

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[8] For reasons discussed below with respect to petitioners Central Coast Peace and Environmental Council, San Luis Obispo Chapter of Grandmothers for Peace International, Ventura County Chapter of the Surfrider Foundation, and the Nuclear Age Peace Foundation, to the extent that Ms. Monteen attempts to establish standing on the basis of geographic proximity to potential transportation routes for spent fuel or high-level radioactive waste, such a showing is insufficient to demonstrate standing.

f. Santa Margarita Area Residents Together

This petitioner bases its standing on the geographical proximity of the residence of its member, Jude Ann Rock, to DCPP. Ms. Rock lives in Santa Margarita, California, within 20 miles of the plant. (SLOMFP Pet., Ex. 8.) As stated above with respect to members of SLOMFP, 20 miles is not a "stone's throw" from the facility, and should not suffice to demonstrate standing based on geographical proximity alone. Rather, the Santa Margarita Area Residents Together should be required to demonstrate more than a generalized concern and that the risk of injury from the proposed licensing action extends that far from the facility. Because it has not done so, this petitioner should be dismissed from this proceeding.

g. Central Coast Peace and Environmental Council

The standing of the Central Coast Peace and Environmental Council is based upon its representative's proximity to a possible transportation route for high-level waste from DCPP to the proposed geologic repository at Yucca Mountain, Nevada, or the proposed ISFSI on the reservation of the Skull Valley Band of Goshute Indians in Utah. Specifically, Bruce Miller's affidavit states that his home lies within one-quarter mile of U.S. Highway 101 and the Union Pacific Railroad tracks. (SLOMFP Pet., Ex. 14.) Mr. Miller also indicates that, in particular, he is concerned that his "health and welfare may be injured by [his] proximity to spent fuel transportation casks that [PG&E] *may* ship through San Luis Obispo en route from the Diablo Canyon nuclear power plant to the Yucca Mountain repository." (*Id.* (emphasis added.))

As noted above, standing in this licensing proceeding cannot be based upon proximity to speculative transportation routes. Transportation approvals are not here at issue. Moreover, because Mr. Miller's claim of injury is conjectural, hypothetical, and unsubstantiated, it does not meet the judicial standards for injury in fact, set forth above. *See Houston Lighting &*

*Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 456 (1979) (denying an individual petitioner standing on the basis of proximity of residence and workplace to a rail line and major highway where the petitioner has made no showing suggesting that the particular railroad or highway are more likely to be used than any other railroad or highway). For these reasons, Mr. Miller has not shown standing pursuant to 10 C.F.R. § 2.714, and Central Coast Peace and Environmental Council should be dismissed from this proceeding.

h. Nuclear Age Peace Foundation

The Nuclear Age Peace Foundation bases its standing on the geographical proximity of its member, David Krieger, to U.S. Interstate Highway 101 and railroad tracks that might one day be used to transport spent fuel away from DCPP. (SLOMFP Pet., Ex. 12 ("In particular, I am concerned that my health and welfare may be injured by my proximity to spent fuel transportation casks that [PG&E] plans to ship through Santa Barbara, en route from [DCPP] to the Yucca Mountain repository").) Mr. Krieger resides in Santa Barbara, California, which is in excess of 100 miles from DCPP. Residence more than 75 miles from a plant will clearly not establish an interest sufficient for standing as a matter of right, even for power reactor licensing. *Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 & 2), LBP-82-43A, 15 NRC 1423, 1447 (1982). Moreover, this petitioner may not rely solely on its proximity to transportation routes for standing. In any event, neither the petition, nor Mr. Krieger in his affidavit, has made a showing suggesting that spent fuel or other high level waste from DCPP will, in fact, be shipped through Santa Barbara — as a result of the proposed Part 72 license or otherwise. *South Texas*, LBP-79-10, 9 NRC at 456. Consequently, this petitioner should be dismissed from this proceeding.

i. San Luis Obispo Chapter of Grandmothers for Peace International

The San Luis Obispo Chapter of Grandmothers for Peace International bases its standing on the geographical location of the residence of its member, Molly Johnson. (SLOMFP Pet., Ex. 11 ¶ 3.) Ms. Johnson has a residence in Paso Robles, California, within 35 miles of DCPP. As discussed above, 35 miles is not "a stone's throw" from the facility, and should not suffice to demonstrate standing based on geographical proximity. *See Pilgrim*, LBP-85-24, 22 NRC 461 (no standing based on proximity where petitioner resided 43 miles from the facility). At this distance, the petitioner should be required to demonstrate, with particularity in the petition, that the risk of injury from the proposed licensing action extends that far from the facility. This organization has not done so.

In addition, Ms. Johnson bases her standing on her geographical proximity to State Highway 46, which, she states, may be used to ship spent fuel from DCPP to either Yucca Mountain or PFS. (SLOMFP Pet., Ex. 11 ¶ 3.) As discussed above, this claim is hypothetical and conjectural in that it is not a certainty that spent fuel or high level waste will, in fact, be transported using State Highway 46. Moreover, close proximity to transportation routes is in any event insufficient to establish standing by virtue of proximity. For these reasons, this petitioner should be dismissed from the proceeding.

j. Ventura County Chapter of the Surfrider Foundation

The Ventura County Chapter of the Surfrider Foundation bases its standing on the geographical proximity of its member, Paul Jenkin, to U.S. Interstate Highway 101 and nearby railroad tracks. Mr. Jenkin states that he regularly drives or walks near railroad tracks crossing the Ventura River, and that he travels the "roads of Ventura" on a daily basis, including U.S. Highway 101. (SLOMFP Pet., Ex. 13.) He states that his home lies "on/within .75 miles of both

Highway 101 and the railroad tracks." (*Id.*) Mr. Jenkin contends that "[his] health and welfare may be injured by [his] proximity to spent fuel transportation casks that [PG&E] plans to ship through Ventura, en route from [DCPP] to the Yucca Mountain repository." (*Id.*)

The city of Ventura is located in excess of 100 miles from DCPP. As previously stated, residence more than 75 miles from a plant will clearly not establish an interest sufficient for standing as a matter of right in a power plant licensing case. *Limerick*, LBP-82-43A, 15 NRC at 1447. Furthermore, as stated above, close proximity to a radioactive waste transportation route alone is not sufficient to establish standing. *Int'l Uranium (USA) Corp.*, LBP-01-08, 53 NRC at 219; *Pathfinder*, LBP-90-3, 31 NRC at 43-44. More importantly, this transportation-related claim is conjectural, hypothetical, unsubstantiated and unrelated to the Part 72 application before the NRC. Therefore, this petitioner also does not meet the judicial standards for injury in fact, set forth above. Mr. Jenkin has not shown standing pursuant to 10 C.F.R. § 2.714, and Central Coast Peace and Environmental Council should be dismissed from this proceeding.

2. *Stated Aspects of Interest*

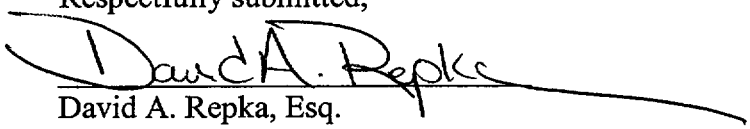
The Petitioners list several specific aspects of the proceeding that are of interest to them. (SLOMFP Pet. at 3-4.) PG&E does not concede that all of the stated aspects are actually within the scope of an NRC Part 72 review and therefore appropriate for litigation in this proceeding. However, given the statement of interest in certain matters related to radiological health and safety and the environmental review, PG&E does not contest the showing regarding the narrow "specific aspects" requirement for intervention. PG&E will address the admissibility of any specific proposed contentions if and when Petitioners are allowed to submit such contentions.

## IV. CONCLUSION

For the reasons set forth above, Ms. Kitman has not demonstrated standing to intervene in this proceeding, and her petition should be denied. Similarly, petitioners Central Coast Peace and Environmental Council, Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, San Luis Obispo Chapter of Grandmothers for Peace International, the Ventura County Chapter of the Surfrider Foundation, Cambria Legal Defense Fund, and Santa Margarita Area Residents Together have not demonstrated standing to intervene, and these organizations should not be granted party status in this proceeding.

PG&E does not, at this time, challenge the standing of the San Luis Obispo Mothers for Peace, the Santa Lucia Chapter of the Sierra Club, and San Luis Obispo Cancer Action Now. However, these petitioners cannot be admitted as parties to the proceeding until they have proffered at least one admissible contention. PG&E will respond to proposed contentions at the appropriate time.

Respectfully submitted,



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77 Beale Street, B30A
San Francisco, CA 94105

ATTORNEYS FOR PACIFIC GAS & ELECTRIC COMPANY

Dated in Washington, District of Columbia
This 3rd day of June 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Pacific Gas and Electric Co. | ) | Docket No. 72-26 |
| | ) | |
| (Diablo Canyon Power Plant, | ) | |
| Units 1 and 2) | ) | |

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

| | |
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| Telephone Number: | (202) 371-5726 |
| Facsimile Number: | (202) 371-5950 |
| Admissions: | District of Columbia Court of Appeals |
| Name of Party: | Pacific Gas & Electric Company |

David A. Repka

Dated at Washington, District of Columbia
this 3rd day of June, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Pacific Gas and Electric Co. | ) | Docket No. 72-26 |
| | ) | |
| (Diablo Canyon Power Plant, | ) | |
| Units 1 and 2) | ) | |

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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| Admissions: | District of Columbia Court of Appeals<br>Court of Appeals of Maryland |
| Name of Party: | Pacific Gas & Electric Company |

Brooke D. Poole

Dated at Washington, District of Columbia
this 3rd day of June, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Pacific Gas and Electric Co. | ) | Docket No. 72-26-ISFSI |
| | ) | |
| (Diablo Canyon Power Plant, | ) | |
| Units 1 and 2) | ) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY TO THE PETITIONS FOR LEAVE TO INTERVENE AND REQUESTS FOR HEARING OF LORRAINE KITMAN AND THE SAN LUIS OBISPO MOTHERS FOR PEACE ET AL.," as well as NOTICES OF APPEARANCE for DAVID A. REPKA and BROOKE D. POOLE in the above captioned proceeding have been served as shown below by deposit in the United States mail, first class. Additional service by electronic mail has also been made this same day as shown below.

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
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G. Paul Bollwerk III
Chief Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F27
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Office of the Secretary
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Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
(original + two copies)
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